

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-mg
MOTORS LIQUIDATION COMPANY, . Chapter 11
Company, . One Bowling Green
Debtors. . New York, NY 10004
. Monday, August 12, 2019
. 10:09 a.m.

TRANSCRIPT OF MOTION OF MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST FOR ENTRY OF AN ORDER PURSUANT TO SECTIONS 106 AND 1142 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3020 APPROVING THE DISTRIBUTION PLAN TO THE AVOIDANCE ACTION TRUSTS BENEFICIARIES (CC: DOC# 14551, 14552, 14571, 14572, 14575, 14577, 14597, 14598); MOTION OF WILMINGTON TRUST COMPANY, AS GUC TRUST ADMINISTRATOR, FOR AN ORDER AUTHORIZING EXPEDITED DISTRIBUTION TO HOLDERS OF 502(h) CLAIMS. (CC: DOC# 14566, 14571, 14575, 14586, 14587, 14602); MOTION OF WILMINGTON TRUST COMPANY, AS GUC TRUST ADMINISTRATOR, FOR AN ORDER AUTHORIZING THE EXPEDITED PAYMENT OF EXCESS GUC DISTRIBUTABLE ASSETS PURSUANT TO SECTION 5.4 OF THE GUC TRUST AGREEMENT. (CC: DOC# 14565, 14571, 14576, 14599, 14600)

BEFORE THE HONORABLE MARTIN GLENN

UNITED STATES BANKRUPTCY COURT JUDGE

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1 (Proceedings commence at 10:09 a.m.)

2 THE COURT: All right. Please be seated. We're here
3 in Motors Liquidation Company, 09-50026. I have all the
4 appearances in front of me. We're just going to begin.

5 MS. GOING: Good morning, Your Honor. Kristin Going,
6 McDermott, Will & Emery on behalf of the GUC Trust. Your
7 Honor, we filed an agenda for today's hearings on Friday for
8 the three motions, and I would propose that we go in that order
9 starting with the AAT's motion. And if that's acceptable, I'll
10 cede the podium to Mr. Fisher.

11 THE COURT: Sure. Thank you.

12 MR. FISHER: Good morning, Your Honor. Eric Fisher
13 from Binder & Schwartz on behalf of the avoidance action trust.

15 Our trust, Your Honor, has one asset and it has one
16 job. The only asset that our trust was entrusted with is the
17 term loan litigation against JPMorgan and that syndicate of
18 other term loan lenders, and our job is to maximize the value
19 of that litigation and then to distribute the proceeds of the
20 litigation to our trust beneficiaries. Our trust agreement, in
21 Section 2.5, says that we're supposed to make that distribution
22 in a way that is, quote, "expeditious but orderly," closed
23 quote.

After all of our waterfall obligations are paid, the beneficiaries of our trusts share 70 percent/30 percent. 70

1 percent of our distributions go to allowed general unsecured
2 claimholders, and 30 percent of our distributions go to the DIP
3 lenders. There has been no objection whatsoever to the
4 distribution proposed to be made to the DIP lenders, to the 30
5 percent. So I think to the extent there's any controversy --
6 and I'll explain why I don't really think there is -- it
7 relates to the distribution to be made to allowed unsecured
8 claimholders.

9 And I think it's important to point out that there's
10 been no objection filed to the plan of the -- of distribution
11 itself. No one claims that the plan doesn't make sense,
12 doesn't comply with the confirmed plan, doesn't comply with the
13 trust agreement. No one has objected to the mechanics or any
14 other facet of the distribution plan itself. The only
15 objections really are an effort to delay the distribution and
16 to delay it in a manner that's potentially indefinite.

17 There were three responses filed to our motion to
18 have our distribution plan approved, an objection by the
19 economic loss plaintiffs, an objection by New GM, and a letter
20 from a pro se individual named Cheryl England. From among
21 those three, Ms. England is the only allowed claimholder of our
22 trust. And as I read her letter, she's not really objecting to
23 the plan of distribution. She says that when people rush, they
24 tend to make mistakes and we should proceed cautiously. So we
25 take that to heart, and I assure Your Honor that if our plan of

1 distribution is approved, we will try to proceed carefully and
2 avoid making mistakes.

3 So that brings us really to the objections of New GM
4 and to the economic loss plaintiffs. New GM is not a
5 beneficiary of our trust, and New GM has no other interest in
6 our trust. Their objection to our plan of distribution is
7 grounded in their opposition to the proposed settlement between
8 the GUC Trust and the economic loss plaintiffs. We are not
9 parties to that settlement, and New GM will not suffer and does
10 not claim that they will suffer any injury if our distribution
11 plan is approved. So for all those reasons, they both lack
12 standing and the objection is without merit, Your Honor. Even
13 if they were to have standing to be heard.

14 With respect to the economic loss plaintiffs, they
15 too are not beneficiaries of our trust. If their proposed
16 settlement with the GUC trust is ultimately approved, they
17 would have no right of recovery from the AAT. That's one of
18 the terms of that proposed element. Their objection instead is
19 grounded in a hypothetical scenario about what might happen in
20 some future event if their settlement is not approved and if
21 then a whole series of other events happen that results in them
22 having allowed unsecured claims at some unknowable point in the
23 future. Your Honor, that kind of speculative, unknowable, and
24 indefinite delay to our distribution plan would be to the
25 severe detriment of our current known beneficiaries and does

1 not constitute a basis to delay our distribution plan.

2 Our case, the term loan litigation, was filed more
3 than ten years ago. At the time it was filed, it was filed by
4 the unsecured creditors' committee. And since these objections
5 would threaten to hold up the distributions to unsecured
6 creditors, I think it is worth keeping in mind that unsecured
7 creditors of our trust in particular have waited a very long
8 time for their distributions. Our proposed plan complies in
9 all respects with the confirmed plan of reorganization with our
10 trust agreement. There are no objections to particulars of our
11 distribution, plan and for all those reasons we think it should
12 be approved and that we should be allowed to make distributions
13 in an expeditious, orderly manner.

14 THE COURT: Let me ask you a few questions,
15 Mr. Fisher. There are no objections to the repayment of the
16 DIP lenders, from whom 30 percent is supposed to go, right?

17 MR. FISHER: Correct.

18 THE COURT: Okay. And I would break the rest of your
19 motion down into two components, the 502(h) claims and then
20 what I would refer to as the excess distribution claims.

21 As to the 502(h) claims, which directly arise from
22 the settlement that I previously approved, as to wish there
23 were no objections, I'm inclined to approve the distribution to
24 the 502(h) claimants. That's what I already approved.

25 As to the excess distributions, which would go to all

1 general allowed creditors, why shouldn't that distribution be
2 made by the AAT to the GUC Trust? Because if I'm reading the
3 documents correctly, isn't it the AAT that proposes to make
4 those excess distributions? 101615

5 MR. FISHER: So, Your Honor, we, the AAT, don't
6 really refer to those distributions as excess distributions.

7 THE COURT: Well, the GUC Trust does, and that --

8 MR. FISHER: Right, because we'd never made a
9 distribution --

10 THE COURT: Correct. But --

11 MR. FISHER: -- because we've never had proceeds to
12 distribute. The way our trust works with respect to allowed
13 unsecured claimholders is we distribute on a pro rata basis to
14 all allowed unsecured claimholders. By virtue of Your Honor
15 having approved the settlement agreement, the 502(h) claimants
16 are allowed unsecured claimholders. And I, of course, note and
17 agree that there were no objections to the allowance of their
18 502(h) claims at the time of settlement approval. But the way
19 our trust document works is we make those distributions
20 directly to unsecured claimholders, not by the GUC Trust.

21 THE COURT: Does the Court have the authority to
22 order that your distribution plan be modified to require that
23 the distributions other than to the 502(h) claimants be made to
24 the GUC Trust?

25 Look, the -- here's the issue from my standpoint, and

1 I guess when Ms. Goings argues the excess distribution motion.
2 Particularly in light of Judge Furman's recent ruling rejecting
3 the Boedeker conjoint analysis, it throws into serious question
4 whether the proposed settlement between the economic loss
5 plaintiffs and the GUC Trust can be approved. That's not
6 before me today.

7 I've made clear at prior hearings, and no one has
8 really disputed this point, that when Judge Furman decides
9 issues relevant to both the proceedings in this court and in
10 the MDL, I have no intention of ruling on those same issues.
11 There is obviously a motion to withdraw the reference that's
12 pending before Judge Furman, which is for him to decide. And I
13 know that there's a hearing before Judge -- a conference
14 scheduled before Judge Furman on Thursday. There were requests
15 put this hearing off until after the conference. I leave on
16 vacation tomorrow morning. I asked whether the moving parties
17 to the motions today consented to the adjournment. They
18 didn't, so we're going forward.

19 The -- let me put it this way. There are a lot of
20 questions that -- assuming that the matters go forward in this
21 court, there are obviously important questions that are going
22 to have to be addressed, see what Judge Furman decides what
23 he's going to do and then what this Court is going to do. And
24 I'm not inclined -- I'm not ready to rule at the moment, but
25 I'm not inclined to authorize distributions to all of the

1 general unsecured creditors beyond the 502(h) claims, which I
2 already approved as part of the settlement, until there's
3 greater clarity.

4 With that said, I don't see any reason for the AAT to
5 have to continue its existence. It could wind down very
6 rapidly, you know, make the 502(h) -- pay the DIP lenders back,
7 make the 502(h) distributions, pay the balance of the funds
8 after whatever expenses you -- the AAT has to the GUC Trust.
9 And then, it's my plan to proceed. Obviously, I -- with
10 respect to the proposed settlement, I had adjourned it all,
11 saying -- well, let me stop there. That -- Ms. Goings, please
12 sit down.

13 MR. FISHER: So, Your Honor, JUST with respect to the
14 economic loss plaintiffs, just to be clear about the avoidance
15 action trust, I'm aware of Judge Furman's decision, and I've
16 read it. We are not parties to --

17 THE COURT: I know that.

18 MR. FISHER: -- settlement, and so I'm in no position
19 to express a view about it.

20 In terms of the notion of the AAT paying the proceeds
21 that would otherwise be available for distribution to allowed
22 unsecured claimholders to the GUC Trust --

23 THE COURT: Go could from one pocket at Wilmington
24 Trust to another pocket at Wilmington Trust.

25 MR. FISHER: Right. So no party has suggested that,

1 and I have not had an opportunity to consider it.

2 THE COURT: Well, I pored -- my clerks and I pored
3 over the underlying documents to see was there anything in the
4 AAT formation agreement or the GUC Trust agreement that would
5 somehow preclude me from directing that the funds be paid over
6 to the GUC Trust, and I couldn't find anything.

7 THE COURT: The only subtlety that I'll point out,
8 which is just something that he would all need to consider in
9 considering this idea, is that the population of unsecured
10 beneficiaries who get distributions from the AAT is not
11 entirely coterminous with the GUC Trust. And that's because
12 our distributions go to original allowed unsecured
13 claimholders. Our interests in our trust have never been
14 tradable. So the population of distributees from the GUC
15 Trust, because the MLTQU units are tradable, may be different
16 from -- in other words, it's --

17 THE COURT: So what happened where people traded
18 their claims away and you say yours -- your group of
19 beneficiaries is different?

20 MR. FISHER: People were not able to trade away their
21 interests in future distributions from the AAT. I'm not saying
22 that that's not some issue that couldn't be worked through and
23 there'd be just two distributions schemes coming through our
24 trust. I just pointed out it's something that --

25 THE COURT: Okay. All right. That's fair.

1 MR. FISHER: -- would need to be ironed out.

2 THE COURT: Thanks, Mr Fisher.

3 Ms. Going.

4 MS. GOING: Your Honor, Kristin Going on behalf of
5 the GUC Trust. I just want to put a finer point on that issue
6 in the proposal that the Court has raised. The GUC Trust makes
7 distributions to unitholders, and those are tradable. The
8 units are tradable, and those go out through DTC. The AAT
9 makes their distribution to the original general unsecured
10 population. And as I understand it from conversations with the
11 AAT -- and I do not purport to be very versed in there AAT
12 agreement, but they are literally going to be making a
13 distribution to the original claimholders. They are not, you
14 know, tradable. Those are not securities. So if that money
15 were to be turned over to the GUC Trust, we don't have a
16 mechanism and we don't -- I mean, that would also require kind
17 of wholesale amendments to the GUC Trust agreement because our
18 agreement only contemplates making distributions to unitholders
19 and not this population of general unsecured creditors,
20 under -- the original general unsecured creditors, I guess I
21 would say. It's two separate and distinct populations

22 THE COURT: That, I wasn't aware of.

23 Mr. Fisher, how much does the AAT -- assuming I grant
24 your motion, how much is the AAT going to distribute to general
25 unsecured creditors? It's beyond the amount of -- it's excess

1 of the 502(h) claims, right?

2 MR. FISHER: Well, the 502(h) claims, Your Honor, get
3 treated as allowed unsecured claims, and so the distribution to
4 them would be pari passu with all the other allowed unsecured
5 claimholders. So we would have to base the distribution off of
6 the allowed claimholders as they stand as of the distribution
7 date.

8 THE COURT: Yeah. But --

9 MR. FISHER: I think, Your Honor, the, the catchup
10 distribution to the 502(h) claimants, namely for 29 percent to
11 bring them on par with distributions that have been made thus
12 far, that's a distribution that does get made by the GUC Trust
13 because the GUC Trust has made all distributions to unsecured
14 creditors to this point in the case, and that's part of the GUC
15 Trust's distribution motion. And so this distinction between
16 502(h) claimants and the excess distribution, I think is more
17 properly a distinction made with respect to the GUC trust.

18 We will have approximately -- I'm using very round
19 numbers -- so \$100 million for distribution to allowed general
20 unsecured claimholders. We're not in the claims allowance
21 business, so --

22 THE COURT: I know. How --

23 MR. FISHER: So our trust agreement just says et the
24 records from the GUC trust and distribute to all allow general
25 unsecured claims as of that date, including the 502(h) claims.

1 THE COURT: How much would have to be distributed by
2 the AAT to bring the 502(h) claimholders to equal amounts that
3 have already been distributed to unsecured creditors?

4 MR. FISHER: Right. So the AAT --

5 THE COURT: I thought there was like \$66 million.

6 MR. FISHER: So this is helping to clarify, I think,
7 the terms. To be brought current with distributions that have
8 been made to other unsecured creditors, the 502(h) claims have
9 to be distributed -- the 502(h) claimants need to get
10 approximately 29 percent of their allowed claim of \$231
11 million. That is a payment that would be made by the GUC
12 Trust. That's where the catchup distribution comes from.
13 Because our trust has never made any distributions to any
14 creditors, we don't owe anyone catchup distribution. We're
15 going to need to calculate the \$100 million dollars across the
16 pool of allowed general unsecured claimants and then make the
17 AAT distribution. So we don't owe creditors any money yet
18 because we've never made a distribution or performed that
19 calculation.

20 THE COURT: Okay.

21 MR. FISHER: I hope that clarifies.

22 THE COURT: Just makes everything more complicated
23 than I thought it was.

24 Ms. Going, why don't you argue your motion. I'm
25 going to give everybody a chance to respond to both of them at

1 the same time.

2 MS. GOING: Your Honor, Kristin Going on behalf of
3 the GUC Trust, and this -- our first motion is, in fact, the
4 502(h) distribution motion, and this is what has been
5 characterized already as the "catchup payment." And you are
6 correct. It's \$68 million, the purpose of which is to catch up
7 the term loan lenders to the 29 percent that has already been
8 paid to allowed unsecured claimholders.

9 The 502(h) motion is not asking Your Honor to approve
10 the 502(h) claim. As you already indicated --

11 THE COURT: I did.

12 MS. GOING: -- that claim has already been approved
13 pursuant to the settlement agreement. This motion is simply
14 regarding timing. And the timing here is specific because
15 under the terms of the GUC Trust agreement --

16 THE COURT: Quarterly.

17 MS. GOING: That's right. And one day difference.
18 The claim arose on July 1st because that's the date in which
19 the term loan lenders made their payment. Had they made that
20 payment one day earlier on June 30th, we would not even be
21 making this motion, Your Honor, because we would have already
22 been in the process of preparing to make that distribution of
23 the catchup payment and also, you know, in addition,
24 distributing the units, the actual securities so that the term
25 loan lenders can receive any additional payments on account of

1 their newly allowed 502(h) claim.

2 So this motion, Your Honor, is simply about the
3 timing. And if we did not bring this motion, then pursuant to
4 the terms of the GUC Trust agreement, we would be required to
5 make this distribution promptly after the close of this third
6 quarter, which would be sometime after October.

7 To the extent Your Honor has any questions simply
8 about the timing?

9 THE COURT: Well, I -- as to the timing of the 502(h)
10 payments, I don't, in theory, have a problem to expediting
11 those payments, although what I would be inclined to do is, for
12 example, permit payments after September 1st -- well, September
13 2nd because of Labor Day, whatever the day after the Labor --
14 after Labor Day holiday is. If somebody thinks they have the
15 ability to seek a stay from a district court, for example, to
16 whatever I wind up ordering, I don't want payments going out
17 tomorrow if there's -- you know, I don't see a point in keeping
18 it alive until October, but that's with respect to the 502(h)
19 payments.

20 With respect to the excess distributions, let me say
21 a couple things. It could be years before there is finality to
22 a whole range of issues. Judge Furman's recent summary
23 judgment decision applies to three states, but -- and I suppose
24 issues will be raised at the conference with Judge Furman.
25 I've already arranged for one of my law clerks to be able to

1 listen to that hearing. So I don't know what -- I have no idea
2 what Judge Furman is going to do, what the various parties in
3 interest are going to argue before Judge Furman. But, you
4 know, unless some court higher than this one orders otherwise,
5 I don't intend to keep hundreds of millions of dollars tied up
6 for years to come before there are further distributions to
7 allowed unsecured creditors.

8 Judge Furman's decision with respect to conjoint
9 analysis, it seems to me, changes the landscape greatly, both
10 in the MDL with respect to the economic loss claimants and in
11 this court with respect to the proposed settlement. The
12 underpinning of that settlement here was the Boedeker conjoint
13 analysis. It was on the basis of that that the economic loss
14 plaintiffs asserted that there was \$77 billion in claims. I'm
15 not deciding any issues today, but other than what I've said
16 all along, I'm not going to decide things that Judge Furman has
17 already decided.

18 I was going to say months ago, but maybe years ago
19 now. I don't know. When I urged the economic loss plaintiffs
20 and the GUC Trust to try and reach settlement, I at least
21 remember making some comment where you -- that I certainly
22 didn't want to be in a position of having to address a
23 disgorgement motion if claims of economic loss plaintiffs were
24 subsequently allowed and there was no money left to pay them,
25 and I am no more inclined to have that situation arise now than

1 I did when I first raised that issue.

2 I certainly didn't -- let me come back to questions I
3 asked Mr. Fisher. And I hadn't focused on that there were two
4 populations of beneficiaries from the AAT versus the GUC Trust.
5 I would -- I'm not ruling yet, but my strong preference would
6 be if the result today or soon thereafter is that I approve the
7 payments to the DIP lenders, I approve the 502(h) payments but
8 reserve decision with respect to additional amounts, I would
9 hope that the AAT and the GUC Trust could find a way to enable
10 the AAT to pass that mantle to the GUC Trust. I don't know how
11 complicated those accounting issues would be, but to have an
12 order that reflected, okay, there's no reason for the AAT to
13 remain in existence anymore. The GUC Trust recognizes as to
14 the portion of funds that are going to come from the AAT to go
15 to general unsecured creditors. It's one population who's
16 entitled to distributions there. And then as to your excess
17 distribution motion, it's a different population. That
18 shouldn't be an insurmountable problem.

19 Go ahead.

20 MS. GOING: Your Honor -- well, on the AAT
21 distribution, if the AAT's distribution is approved, then there
22 would be nothing --

23 THE COURT: Well, I'm only -- if I only approve it in
24 part, if I approve the portion where they make the 502(h) -- I
25 already approved that. I permit them to make that distribution

1 and remaining funds go to the GUC trust.

2 MS. GOING: But --

3 THE COURT: And you all figure out how that would --
4 who has an entitlement to those funds.

5 MS. GOING: Okay. So I guess under what you're just
6 proposing now -- and I'm going to treat it somewhat as a
7 hypothetical because I'm not arguing on behalf of the AAT or
8 the term lenders or the other allowed unsecured creditors, but
9 I think what you're proposing highlights the fact that you just
10 said you've already allowed the 502(h) claims.

11 THE COURT: Yes.

12 MS. GOING: That's correct. But the other
13 beneficiaries of the AAT trust, they have already also been
14 allowed general unsecured creditors. So the idea that they
15 would somehow not be treated the same seems inequitable because
16 they're all -- they're just -- there are two groups that are
17 now allowed unsecured creditors. And it would be withholding
18 money potentially indefinitely for individuals that don't even
19 have disputed claims.

20 THE COURT: It isn't going to be indefinitely on my
21 watch. It may be some other judge is going to conclude that.
22 It is not going to be indefinite. But go ahead.

23 MS. GOING: Okay. But the AAT trust agreement
24 provided for a distribution mechanism and didn't have any
25 contingencies for a holdback. It said when the claims are

1 allowed and the money comes in, they need to be paid. And
2 similarly under the GUC Trust agreement, right, the GUC Trust
3 agreement was created and contemplated that there was going to
4 be a claims allowance process, and the terms of the GUC Trust
5 agreement set forth when the claims can be paid, which is once
6 they're allowed, and also provides for what needs to be
7 reserved for. And that's disputed unsecured claims. And I
8 understand Your Honor's concerns with the settlement --

9 THE COURT: You entered into a settlement --

10 MS. GOING: Your Honor, we --

11 THE COURT: -- that was going to provide for some
12 unknown amount of additional class claims being allowed. Okay.
13 The question remains whether that's going to be approved or
14 not. If it's not approved, then it goes back to the drawing
15 board of the motion to allow late class claims. So my
16 understanding of -- and I've -- you know, it's been a long time
17 since I've had to deal with this issue. If a bankruptcy
18 court -- I have a motion to allow a late class claim. If I
19 don't, there's authority -- I'm not saying it necessarily would
20 be what the court would do here -- that I would permit putative
21 class members to file individual claims, late claims. Okay
22 And it may be that under Judge Furman's damages decisions,
23 those claims are not worth much, but who knows. Okay. But
24 they're not worth what the conjoint analysis would show. Okay.
25 But that my recollection -- and I haven't gone -- I did not go

1 back to look at this, but just going by memory where the motion
2 to allow a late class claim -- to allow a class claim, forget
3 the late part, allow a class claim, if it's denied, you're
4 supposed to give the putative class members a chance to file
5 individual claims.

6 So if that's what happened -- I mean, certifying a
7 class if benefit of the bargain is no longer on the table, it
8 just struck me in reading Judge Furman's decision that it would
9 be very difficult for the economic loss plaintiffs to certify a
10 non opt-out class if everything hinged on whether somebody
11 could prove that, well, they had lost wages when they were
12 taking their car in for repair or whatever. The class size may
13 be completely different. Lots of things Judge Furman left in
14 his decision. He wasn't going to go on and reach those others
15 decisions. He set up a conference. I don't know how that's
16 all going to shake down. Okay.

17 But it's conceivable that I could say I deny leave to
18 file a late class claim, permit leave to file individual late
19 claims by economic loss plaintiffs, give them some -- how many
20 are going to file claims? I don't know how many would actually
21 be able to meet the damages standards. I don't -- that's all
22 speculative at this point.

23 MS. GOING: And Pioneer.

24 THE COURT: Completely speculative. But you entered
25 into the settlement.

1 MS. GOING: But, Your --

2 THE COURT: So don't tell me that I ought to approve
3 excess distributions to all allowed claims when your motion to
4 approve a class settlement is pending.

5 MS. GOING: But, Your Honor, that's exactly why you
6 should allow --

7 THE COURT: That's exactly why I shouldn't.

8 MS. GOING: But this is -- as you well know, this is
9 settlement agreement 3.0, right. This is not new information.
10 The fact that the avoidance action trust had a reserve of --
11 let's call it \$450 million and the fact that the avoidance
12 action trust and the term loan lenders were in active
13 settlement discussions and mediation, that was all happening
14 concurrently with our negotiations over the settlement
15 agreement, at least settlement agreement 2.0 and 3.0.

16 The economic loss plaintiffs could have asked for
17 some sort of holdback or some sort of protection or some sort
18 of anything with regards --

19 THE COURT: That's what they're asking for now.

20 MS. GOING: They're asking -- but it's not what they
21 negotiated for, and it wasn't part of the settlement. The --

22 THE COURT: Well, you negotiated two.

23 MS. GOING: The --

24 THE COURT: Don't tell me you -- this is an agreement
25 you signed.

1 MS. GOING: We did, and we signed an agreement
2 whereby they were speaking solely -- and they were taking the
3 risk as to whether or not the accordion would be triggered and
4 they would not look to any of the remaining \$450 million that
5 was sitting with the GUC Trust. That's the agreement.

6 THE COURT: Boy, you really -- you're making an
7 argument that I find highly questionable in light of the fact
8 that, you know, you negotiated a settlement, got rejected, you
9 went back and negotiated a second settlement. It hasn't been
10 ruled on yet.

11 A key component of that settlement was that if it was
12 approved, the economic loss claimants agreed no -- they would
13 not seek disgorgement of any distributions to general allowed
14 unsecured claimholders. Settlement doesn't get approved, there
15 is no agreement not to seek disgorgement. There's no agreement
16 as to whether -- what the entitlement of late claimants would
17 be if late claims are allowed. You supported that settlement.
18 You supported it the first time when there would've been no
19 disgorgement. You supported it the second time when there was
20 no disgorgement. And I find it highly questionable that you
21 would stand here now and say, in light of all that's happened,
22 I should just go ahead and permit the excess distributions so
23 there's essentially no money left in the GUC Trust if the
24 economic loss plaintiffs wind up with allowed claims.

25 MS. GOING: But, Your Honor --

1 THE COURT: That's what you're arguing.

2 MS. GOING: -- because --

3 THE COURT: Isn't it?

4 MS. GOING: -- absent the settlement --

5 THE COURT: Isn't that what you're arguing?

6 MS. GOING: No, because absent the settlement
7 agreement, we would be back to arguing over whether or not they
8 even have a right to file a late claim, which we've always
9 asserted that they don't.

10 THE COURT: Okay. All right. Let me hear from the
11 other side.

12 Go ahead.

13 MR. FISHER: Thank you.

14 THE COURT: I'm sorry. Let me hear from other
15 counsel, but I'll give you another chance, Mr. Fisher.

16 MR. FISHER: Thank you, Your Honor.

17 MR. GOLDEN: Morning, Your Honor. Daniel Golden,
18 Akin Gump Strauss Hauer & Feld.

19 THE COURT: Good morning, Mr. Golden.

20 MR. GOLDEN: Counsel for the participating
21 unitholders.

22 Your Honor, I am prepared to go forward and support
23 the joinder and reply that we filed in support of the GUC Trust
24 distribution motion. But before I get there, I'd like to
25 address a couple of the items that Your Honor has raised this

1 morning.

2 Number one, I hope we have clarified the distinction
3 between the population of the AAT and the beneficiaries of the
4 GUC Trust. I was actually heartened to hear that although you
5 think that there may be -- it may be years before there is
6 finality of all the issues at the MDL, it's not your intention
7 to, for years, hold up the distribution of hundreds of millions
8 of dollars that are in question today.

9 THE COURT: A higher court may decide that, but I --

10 MR. GOLDEN: I --

11 THE COURT: -- that's not my intention.

12 MR. GOLDEN: Appreciate that, Your Honor. You did
13 make a statement, though, Your Honor, that you think that in
14 light of Judge Furman's decision, I think the words were "it
15 throws into question whether the proposed settlement can be
16 approved."

17 The GUC Trust is not a party to the MDL proceedings.
18 The unitholders of the GUC Trust are strangers to the MDL
19 proceedings. So by way of example, there's a conference
20 scheduled for Thursday. I don't know that we're invited to
21 attend.

22 THE COURT: You'll probably be in the audience, but
23 you know --

24 MR. GOLDEN: Presumably. Your Honor, but as I read
25 Judge Furman's decision, it goes to the issue of the quantum of

1 damages that the economic loss plaintiffs may be able to
2 ultimately sustain. Maybe they can sustain the burden of their
3 damages, maybe they can't. But that issue is a risk that the
4 economic loss plaintiffs took on themselves in exchange for
5 entering into the settlement agreement with the GUC Trust, a
6 settlement agreement actively negotiated by the participating
7 unitholders and continues to be supported by the unitholders.

8 So just so that there's no ambiguity, what the GUC
9 Trust promised under that proposed settlement agreement was to
10 consent to the late filing of the putative class claims. What
11 the economic loss plaintiffs agreed to was not to look to prior
12 distributions, not to look to current assets, have the
13 opportunity before Your Honor to estimate their claims, but
14 there's no guarantee that the estimate would have been in an
15 amount sufficient to trigger the accordion or the adjustment
16 shares. That's their risk, not the GUC Trust's risk.

17 THE COURT: GUC Trust risks that I decline to approve
18 a settlement that would require the court to certify a non
19 opt-out class. Is that right?

20 MR. GOLDEN: Yes.

21 THE COURT: Okay.

22 MR. GOLDEN: That is part and parcel and is an
23 integral part of the settlement.

24 THE COURT: And in light of Judge Furman's ruling,
25 the issue is not before me today, I understand that. But I

1 don't -- the path forward to certifying a non opt-out class in
2 light of Judge Furman's ruling is highly doubtful, highly
3 doubtful. Possible. There will be creative arguments, you
4 know, be raised. But if I don't -- well, go ahead, Mr. Golden.

5 MR. GOLDEN: Your Honor, I just -- I do want to
6 recount some recent history that may well bear on a
7 demonstration of the economic loss plaintiffs' motivation here.
8 Back in 2015, the GUC Trust announced, notified, sent a notice
9 that it intended to make a distribution, an access distribution
10 of approximately 135 million. Judge Gerber was sitting --
11 presiding over the GM cases at that time.

12 The economic loss plaintiffs said, not so quick, we
13 don't think that distribution should be made. There was an
14 evidentiary hearing. Judge Gerber found that there would be
15 material prejudice to the unitholders if there was a stay of
16 that distribution and ordered the economic loss plaintiffs to
17 post a bond of \$10.6 million in order to obtain a stay.

18 THE COURT: When was that decision in relation to the
19 Second Circuit's Elliott decision --

20 MR. GOLDEN: It was --

21 THE COURT: -- when they vacated Judge Gerber's
22 ruling on --

23 MR. GOLDEN: I think it was before.

24 THE COURT: Yes, it was.

25 MR. GOLDEN: I think --

1 THE COURT: Absolutely before.

2 MR. GOLDEN: I think it was before.

3 THE COURT: Okay. That -- you know, that's about --
4 the Second Circuit decided about the time I inherited the case.

5 MR. GOLDEN: The economic loss plaintiffs declined to
6 post bond. Distribution was made.

7 THE COURT: Okay. And the Second Circuit reversed
8 Judge Gerber, and with respect to this -- and vacated his
9 ruling with respect to equitable mootness.

10 MR. GOLDEN: Yes.

11 THE COURT: And that's why we're here.

12 MR. GOLDEN: Yes. In 2016, which I believe was after
13 the decision, a further proposed distribution was to be made by
14 the GUC Trust. In that situation, I think it was \$112 million
15 to be distributed. The economic loss plaintiffs, for whatever
16 reason, decided not to do anything with respect to that
17 distribution, and that distribution was made.

18 The economic loss plaintiffs, represented by highly
19 qualified counsel, saw the lay of the land, saw what the Second
20 Circuit did, and decided that it was in its clients' best
21 interests to enter into a settlement agreement with the GUC
22 Trust. All the settlement agreements have been largely the
23 same basic apparatus.

24 THE COURT: You did a great job in protecting your
25 clients' interests in limiting any recovery to the adjustment

1 shares.

2 MR. GOLDEN: And that's -- but don't, but it should
3 not be minimized that that was the prize that the economic loss
4 plaintiffs had their eyes on.

5 THE COURT: Mr. Golden, let me say this. What my
6 concern is, is that Judge Furman's decision has seriously
7 altered the landscape of this case in a way that's not
8 addressed in the briefing before me. And I want -- it may be
9 that in a matter of weeks or a month or sometime soon, I agree
10 with you that excess distribution should be made to allowed
11 unsecured claimholders. But I'm -- I've been struggling since
12 I got -- and, you know, Mr. Steinberg filed a copy -- you know,
13 New GM's counsel, whoever filed it. I had already seen the --
14 I had already read the decision. I've read it several times.
15 And without the benefit of the parties having a chance to
16 address what the impact of that decision here is, I've
17 obviously spent time thinking about it, a lot of time thinking
18 about it in a short period of time, but that's not the same as
19 giving the parties in interest with a chance to address it.

20 And when I made my statement about it's not my
21 intention to keep this -- quite a large amount of money tied up
22 indefinitely because it could go -- that could be a very long
23 period of time, I'm not prepared to rule today that the GUC
24 Trust should make those excess distributions. That isn't
25 deciding the issue ultimately, but what I'm saying is on what I

1 have today, which has not -- you know, Mr. Weisfelner's
2 position is that, oh, you'll have plenty of time. You know,
3 Judge Furman has Daubert motions, Judge Furman has other stuff.
4 All that -- you know, you can go forward, you can certify the
5 class. You know, he hasn't decided the class issues before him
6 because I think Mr. Weisfelner acknowledged it could make a
7 difference between 29 million or 11 million class members. And
8 I've been holding this because I -- I'm not prepared to have
9 notice go out to 29 million or 11 million without some greater
10 certainty about what's the class. And I wasn't -- you know,
11 that's before Judge Furman. Well, the conjoint analysis
12 decision, we'll see. I think it has a substantial impact on
13 class, class size or any class, here or in the district court.

14 So I don't see it -- look, I don't see any reason to
15 hold off in the AAT paying the DIP lenders the 30 percent
16 they're owed or paying -- somebody paying the 502(h) claimants
17 to bring them to parity with distributions that have been made
18 to general unsecured creditors. I didn't realize this
19 different population issue. Okay. But I'm just -- I don't --
20 do you want your clients to be faced with the potential for
21 disgorgement if money goes out to them? You want to have to
22 argue that issue?

23 MR. GOLDEN: Your Honor, I think if I asked my
24 clients, they would prefer getting the --

25 THE COURT: Yeah, money in hand today.

1 MR. GOLDEN: Absolutely.

2 THE COURT: Sure.

3 MR. GOLDEN: Absolutely, Your Honor.

4 THE COURT: Well, I would rather not have to deal
5 with the issue of --

6 MR. GOLDEN: Well, you just asked me about my
7 clients.

8 THE COURT: Yeah.

9 MR. GOLDEN: Okay.

10 THE COURT: Take the money and run.

11 MR. GOLDEN: Well, it's not "run." They're real
12 institutions.

13 THE COURT: I didn't mean it in that sense. I --
14 okay.

15 MR. GOLDEN: But I do want to point out, Your
16 Honor -- look, I'm not gonna beat a dead horse. If Your Honor
17 is not prepared to rule today and to reserve on the issue of
18 the excess distributions, that's Your Honor's prerogative. But
19 I do want to make sure that everybody understands that the risk
20 was on the economic loss plaintiffs. So, for example, if the
21 settlement had been approved when we get to the settlement, but
22 that at the estimation proceeding, they could not convince the
23 court that they had claims somewhere in the neighborhood of
24 3 billion or more -- let's remember --

25 THE COURT: To get up to 35 billion. I understand.

1 MR. GOLDEN: To get to the triggering amount.

2 THE COURT: Yeah, I understand.

3 MR. GOLDEN: That would have been the end of the
4 story. They would have given up their rights. There was no
5 guarantee. As Ms. Going said, they didn't bargain for an
6 escape hatch in that situation. And frankly, I think if we had
7 to go back, if they -- if the settlement was disapproved --

8 THE COURT: And maybe you'll persuade me of that in a
9 couple of weeks. I don't know, you know.

10 MR. GOLDEN: So one thing I would ask Your Honor is,
11 look, I understand that there are dueling courts with respect
12 to the issue.

13 THE COURT: It's not dueling. Judge Furman -- I --
14 you know, the one thing that nobody -- I don't -- you know, I
15 haven't heard disagreement from any of the counsel here that,
16 you know, I've been told these issues, this group of issues is
17 pending before Judge Furman, and I've said, look, I -- he's
18 going to rule on them, I'm not going to secondguess or review
19 things that he's done, and I haven't heard anybody raise
20 questions about that. Maybe there'll be some arguments about
21 why the rule ought to be different in bankruptcy Court and the
22 district court. You know -- look, he can withdraw the
23 reference and -- but whether he does or not, if he keeps -- if
24 it stays here, I still don't plan -- there may be -- I don't
25 know whether -- you know, it's not a final decision that he's

1 entered. I don't know whether there can be further appellate
2 activity from his recent ruling or not. There's conference
3 before him later this week.

4 MR. GOLDEN: So two requests I would make, Your
5 Honor, is that we set a specific adjourn date for this motion.

6 THE COURT: Well, we will. We will. I --

7 MR. GOLDEN: And number two, I would request that we
8 deal today with the issue of GM's standing with respect to its
9 opposition to the distribution motion, that the standing issue
10 has infected these cases throughout. Your Honor is the author
11 of a well-reasoned decision regarding GM's standing in
12 connection with the -- one of the prior versions.

13 THE COURT: That's because you liked it, and they --
14 you know, but anyway.

15 MR. GOLDEN: That's correct, but they didn't take an
16 appeal. And that -- the facts haven't changed, and so that
17 every time that GUC Trust and the unitholders want to do
18 something, they are going to be confronted with GM's opposition
19 if there's any chance that what -- the relief that's being
20 sought may have some hypothetical conjectural impact on the
21 adjustment shares.

22 THE COURT: For today -- let me just say, Mr. Golden,
23 that for today, I don't think where I am in my thinking would
24 change one bit whether New GM has standing or doesn't have
25 standing.

1 MR. GOLDEN: Is that a ruling?

2 THE COURT: No. I -- it's how I'm feeling about it
3 for the moment.

4 MR. GOLDEN: Your Honor, unless you have other
5 questions and we can get to a specific adjourn day time, I'm
6 prepared to cede the podium.

7 THE COURT: All right. I mean, probably what I would
8 do if we go in the route that I'm headed is ask you all to
9 confer and try and work out a briefing schedule, and you'll get
10 it on my calendar pretty quickly. I mean, that's not -- you
11 know, I've let a long time go since the settlement motion was
12 on. I adjourned it. And, you know, I adjourned it because
13 there were issues -- important issues pending before Judge
14 Furman. While he and I have said before, he and I have
15 communicated from time to time, we did not discuss in advance
16 what he was going to rule on, which motions, whatever. So I
17 got a copy right after he ruled, but it's his decision. We --
18 he and I didn't discuss it, but it has an impact here.

19 So I mean -- what I'd like to try and do is deal with
20 those issues -- well, as to the DIP lenders and the 502(h).
21 502(h), I've already decided. I want to find a way for those
22 distributions to be made. I would like to find a way that the
23 AAT doesn't have to stay in existence if it's not necessary for
24 it to do that, but it may not be. Okay.

25 And then as to the other issues, you know, I mean

1 some of this may be guided by what happens before Judge Furman
2 on Thursday. I don't know. I -- you know, I've told you that
3 I've arranged to have one of my law clerks listen in to the
4 hearing. So whether it -- there's any rulings or not, I don't
5 know, but at least I will be in -- I won't be in town. I'm
6 out -- I leave on vacation tomorrow.

7 Okay. Let me hear from other counsel.

8 MR. GOLDEN: Thank you, Your Honor.

9 MR. NOVIKOFF: Morning, Your Honor. Harold Novikoff,
10 Wachtell, Lipton, Rosen & Katz, for JPMorgan Chase Bank, N.A.

11 Your Honor, I'm going to be very brief because I just
12 heard you to say decided the 502(h) issue, which is really what
13 I'm here to talk about, and I appreciate Your Honor's ruling on
14 that. I think I understood Your Honor to say you would like to
15 delay any distribution on that until after September 2nd.

16 THE COURT: I -- look, I don't -- you know, I'm
17 leaving on vacation tomorrow morning. I don't want to suddenly
18 find a stay motion on my docket while I'm in an airplane in a
19 race to -- you know, I want to allow enough time if
20 somebody --I haven't entered in order. I don't have a stay
21 motion. It's denied in advanced. If somebody wants to make a
22 stay motion, they're gonna have to go to the district court to
23 get it. Okay. But I want to, at least, provide enough time
24 that if there is going to be a stay motion, somebody can go to
25 the district court to ask for it.

1 MR. NOVIKOFF: Okay. Your Honor, I understand Your
2 Honor's position.

3 THE COURT: And it just seemed to me that given this
4 is the 12th, you know, September 3rd is the day after Labor
5 Day, something like that.

6 MR. NOVIKOFF: But could I seek a minor clarification
7 on that --

8 THE COURT: Go ahead. Sure.

9 MR. NOVIKOFF: -- which is, the GUC Trust needs to go
10 through a process before it can send out the money to the term
11 lenders. It needs to -- my understanding is they want to send
12 a letter out, get account information, et cetera, and they need
13 that information in hand before they could send anything out.
14 Could I ask that they be permitted at least to start that
15 process before the 2nd?

16 THE COURT: Absolutely. I just don't want the
17 distributions made until, you know, September 3rd. I'm
18 using -- I picked a number that would give -- if somebody's
19 going to try and get a stay from another court, they've got
20 enough time to do that. I think all of the -- I'm saying
21 I've -- I think I've already approved the 502(h), and I don't
22 see a reason to have to wait until October for those
23 distributions to be made. Okay. So please go ahead, figure it
24 all out, but don't make the distributions until -- if September
25 3rd is the day after Labor Day. You know, if somebody's going

1 to seek a stay from the district court, I wouldn't advise
2 waiting until Labor Day weekend to ask for it.

3 MR. NOVIKOFF: Thank you, Your Honor.

4 THE COURT: Okay.

5 MS. GOING: Your Honor, we would be happy to submit a
6 revised order specifying September 3rd or September 4th if
7 you'd like us to do that today.

8 THE COURT: Okay. I really would -- what I -- let me
9 hear from others, and then we'll talk some more.

10 Go ahead, Mr. Weisfelner.

11 MR. WEISFELNER: Your Honor, Ed Weisfelner, Brown
12 Rudnick, on behalf of the plaintiffs. Judge, it's not my
13 intention to snatch defeat from the jaws of victory, but I do
14 want to speak briefly, and in particular as to the alternative
15 form of relief that we sought in our papers.

16 Your Honor, I want to start by agreeing that Judge
17 Furman's decision presents, in our view, an inflection point in
18 this case at a minimum. And I think it's an inflection point
19 that we and the other parties in this court can and should take
20 advantage of. But let me just run through my argument and then
21 get to the specific requests that I have.

22 Your Honor, the settlement agreement that reference
23 has been made to is something that we, the plaintiffs, continue
24 to support. Your Honor knows that it was designed from the GUC
25 Trust's and beneficiaries' perspective to avoid: number one, a

1 challenge to their remaining assets; number two, avoid
2 disgorgement on past distributions; and number three, avoid
3 further litigation expense and risks. Now the motion that the
4 GUC Trust has filed seeks to change the status quo by removing
5 the biggest risk to the beneficiaries that led to the
6 settlement agreement in the first place by having the remaining
7 assets distributed early and without an adjudication of the
8 settlement agreement they entered into.

9 Now what also concerns us, Judge, quite frankly, is
10 that in the settlement agreement itself, the GUC Trust reserved
11 to itself a unilateral right to pull the plug on the settlement
12 agreement as early as mid-September. And what I didn't hear
13 Ms. Going tell you is that they're not going to rely on that
14 mid-September provision that gives them the unilateral right to
15 yank the agreement. There was also a meet-and-confer
16 obligation in the settlement agreement that specifically
17 anticipated the decision by Judge Furman, which has happened.
18 We were then supposed to meet and confer within five days of
19 that decision to see where we go from here.

20 THE COURT: Have you done that yet?

21 MR. WEISFELNER: Well, I had something of a meet and
22 confer with Mr. Golden, but I haven't heard from Ms. Going, and
23 I don't know if that's because she was in the middle of her
24 move from one firm to the other, but it didn't take place.

25 We understand the GUC Trust's reliance on provisions

1 of the plan, the GUC Trust agreement, all that good stuff, but
2 what I think that alliance misses is the facts on the ground
3 subsequently. You know, they rely on the provisions that say
4 only allowed claims as with dates certain or only disputed
5 claims data as of a date certain are their beneficiaries, the
6 only people entitled to a distribution. What that reliance
7 ignores is the reality that Old GM knowingly sold cars with
8 serious safety defects.

9 THE COURT: This part, you can spare me. I mean, I'm
10 going to let -- letting you make your argument. I'm very
11 mindful of that.

12 MR. WEISFELNER: Gotcha. My only point is that the
13 courts have already determined that the plaintiffs' due process
14 rights were violated with respect to the plan, with respect to
15 the bar date. I think that extends to their ability to rely on
16 trust documents that will predicate it on certain assumptions
17 that turned out not to be true and before there was an
18 adjudication of a violation of our due process rights.

19 THE COURT: Well, although I -- I would note, I think
20 this is correct. The Second Circuit vacated the equitable
21 mootness ruling but hasn't decided whether the -- whether it's
22 equitably moot. They vacated the ruling.

23 MR. WEISFELNER: I agree, Judge. I agree. But let's
24 assume for the moment that the GUC Trust and its beneficiaries
25 continue to support the settlement agreement. And look, I

1 know, as well if not better than anybody else, that the
2 settlement agreement has been years in the making, and we're on
3 a third iteration. I want to focus on the settlement agreement
4 itself because I think Your Honor put your finger on it.

5 The settlement agreement really -- what it boils down
6 to is in two different parts. The first question that it
7 raises is the court's ability to acknowledge a late claim,
8 either on a classwide basis or on an individual basis, through
9 the facts and circumstances of this case when married up
10 against the Pioneer factors allow for an allowance of a late
11 claim.

12 The second part of the analysis is the settlement
13 that we've entered into, where we forego any entitlement to
14 claw back existing proceedings. We end up litigation. We take
15 the risk of the estimation of our claims. It's that portion of
16 the settlement agreement that had all sorts of Rule 23
17 implications that raise the ire of New General Motors on
18 whether or not you can enter into a settlement that affects
19 absentee members of the class without compliance with their
20 version of what will Rule 23 required. But --

21 THE COURT: Well, let me just -- let me interrupt. I
22 mean, the -- and I may be wrong and get no parties have had a
23 chance to brief this before me, but it -- the underpinning of
24 the settlement is a limited fund 23(b)(1) class. The limited
25 fund hinged on getting above \$35 billion.

1 MR. WEISFELNER: Correct.

2 THE COURT: And that's been thrown into substantial
3 doubt.

4 MR. WEISFELNER: Correct. I understand.

5 THE COURT: That's saying it generously, frankly.

6 MR. WEISFELNER: Sure. But again, putting that
7 element of the settlement agreement to the side, assume the
8 settlement agreement falls apart for any reason including the
9 fact that Ms. Going decides to pull the plug in the middle of
10 September. My point is that what appeared to be
11 non-controversial but for the Pioneer defenses that they had
12 raised historically is whether or not the remedy for denial of
13 due process with regard to the bar date is the ability to file
14 a claim, putting aside the equitable mootness question for the
15 nons. My point is that if our claims are allowed on a
16 classwide basis, individually, there then have to be a
17 determination --

18 THE COURT: When you say individual, allowed on
19 the -- it's -- if I don't allow -- if I allow late claims but
20 don't permit a late class claim, I -- is -- and I haven't --
21 I'm not ruling out any of this, but my recollection is I'm
22 supposed to give putative --

23 MR. WEISFELNER: An opportunity for people to file,
24 sure.

25 THE COURT: -- class members an opportunity to file

1 claims.

2 MR. WEISFELNER: And my point is at that point, we'd
3 be into a claims --

4 THE COURT: A nightmare.

5 MR. WEISFELNER: -- objection process or claim
6 estimation process. And, Your Honor, you're right. The
7 Boedeker report, which took a beating in front of Judge Furman,
8 said there were \$77 billion worth of potential damages. Just
9 so that Your Honor is clear, as when and if we get to a
10 determination in the bankruptcy court as to the value of those
11 claims, it's not going to be the discredited Boedeker report
12 that we were rely on. We have backup as to what the damages
13 are. But here's the important -- final point that I want to
14 make. Seventy-seven billion, big number. Less than two
15 billion, a fraction of that number. Why do I talk about less
16 than two billion?

17 THE COURT: That's what they need to get above 35.

18 MR. WEISFELNER: No.

19 THE COURT: No?

20 MR. WEISFELNER: The two billion, less than two
21 billion, is significant because if the class or the individuals
22 ever convince Your Honor that they have claims -- and I forgot
23 the exact number, somewhere between a billion and
24 three-quarters and two billion, if that's the allowed amount of
25 the claim, it will never trigger the accordion. But guess

1 what? On a catchup theory, we eat every dime that's left in
2 the GUC Trust in order to get to the same 30 percent that
3 everyone else has gotten. So the target of 77 was relevant in
4 terms of the accordion feature. A two billion or less target
5 is relevant to sucking up the entirety of the GUC Trust
6 distribution.

7 THE COURT: And New GM would be very happy, you know.
8 You can --

9 MR. WEISFELNER: GM would be very happy. You're
10 right, Your Honor. And it's not my job nor intent to make New
11 GM happy, but sometimes it is what it is.

12 Your Honor, I also think it's important that the GUC
13 Trust and beneficiaries' current position is inconsistent with
14 the position that they took in the motion to approve the
15 settlement agreement, where they urged Your Honor to get on to
16 resolving the settlement agreement as quickly as possible and
17 get to estimation so they could make distributions out of the
18 GUC Trust. The clear implication is we can't make any further
19 distributions, having entered into the settlement agreement,
20 until Your Honor adjudicates the settlement agreement. And
21 now, they're taking a completely different tact.

22 Your Honor, I want to get to Judge Furman's decision
23 and the second form of relief that we sought in our responsive
24 papers.

25 We asked, first of all, to adjourn the distribution

1 motion until this Court could adjudicate the settlement
2 agreement. I understand Your Honor's concern, and I understand
3 the GUC Trust and beneficiaries' concern that their
4 distribution's not being held up forever. I don't know what's
5 going to happen with regard to their right to pull the plug in
6 the middle of September and make the settlement agreement, in
7 effect, moot. The -- but the second thing that we asked the
8 Court to consider was an adjournment of these motions pending
9 court-ordered mediation. And I say that because, again, I
10 think we're at an inflection point. The decision on New GM's
11 summary judgment does, I suggest to Your Honor, require that
12 everyone go back to their corners and figure out what their
13 risk/rewards are in ongoing litigation. I'm not in a position
14 to concede that the decision in any way is case dispositive.
15 And frankly, Your Honor's view of the impact of Judge Furman's
16 decision on the whole notion of conjoint analysis, with all due
17 respect, I think is wrong.

18 I think the problem that Judge Furman identified with
19 regard to the Boedeker report comes down to a simple fact. He
20 wanted market value to be determinative of the difference
21 between the price at which the cars were sold and the price at
22 which the cars would have been sold if the known defect were
23 known to all of the parties. And the missing link, as far as
24 Furman's concerned, based on my reading and I'm no expert, is
25 that we didn't have any indication of the number of cars that

1 Old GM would have sold at the discounted price that the
2 plaintiffs would have been willing to buy the defective car.

3 Now, frankly, Your Honor, in my own mind, I see a
4 disconnect because what we do know as a matter of fact is that
5 Old GM knew in 2005, 2006, 2007, up until 2009, that it was
6 selling cars with a serious safety defect. It's already
7 entered into a resolution of its criminal liability and paid
8 quite a big fine. My point is, I think if we're looking for
9 the number of cars that Old GM was prepared to sell with a
10 known defect at a slightly reduced cost, well that reduced cost
11 is the damages that it was willing to incur down the road. It
12 took the risk.

13 THE COURT: Mr. Weisfelner, I've had no communication
14 with Judge Furman other than seeing -- reading his decision,
15 but he just -- he granted summary judgment. He didn't just
16 grant a Daubert motion and say, you're going to have to come up
17 with a new damage theory.

18 MR. WEISFELNER: I --

19 THE COURT: He granted summary judgment for New GM.

20 MR. WEISFELNER: Yes, he did in three bellwether
21 cases, but it's not conclusive or determinative as to where
22 he's going to go from here on the remaining issues in the case
23 or the application of his summary judgment decision beyond the
24 bellwether. Your Honor, there's also -- I know Your Honor saw
25 it because you read it multiple times, like we all did, the

1 judge's own commentary that on the motion for summary judgment
2 relative to the conjoint analysis, this was a, quote, "close
3 call." Among the options that are available to the
4 plaintiffs -- and it'll be someone else's call, not mine -- is
5 a motion for reconsideration, is a request for an interlocutory
6 appeal.

7 There are lots of, for lack of better term, "balls that are up
8 in the air."

9 THE COURT: I agree.

10 MR. WEISFELNER: Your Honor knows that Judge Furman
11 expects the plaintiffs and New GM to be available in a chambers
12 conference. Your Honor mentioned that to Mr. Golden.
13 Mr. Golden indicated to Your Honor, we don't know if we're
14 invited, but Your Honor noted that they're more likely to be in
15 the audience at some point. I just want to attempt to wrap
16 this all up, wrap it all up in the perspective of everyone
17 that's got an incentive to participate in the settlement.

18 And rather than rely on an invitation being made at
19 the conference, Your Honor has the ability, in connection with
20 my request in my papers, for mandatory mediation. And when I
21 look at this from the perspective of the GUC Trust
22 beneficiaries and the timing of distribution, mediation doesn't
23 have to take 120 days like Judge Swain ordered in Puerto Rico
24 that we're all dealing with currently. Mediation could be 30
25 days. It could be 60 days. And mediation isn't a gun to

1 someone's head. If you don't like the way the mediation's
2 going, the mediation results in an impasse. But given where we
3 are today, given the incentives that the GUC Trust
4 beneficiaries had to avoid years of additional litigation
5 and risk to their current anticipated distribution, let alone
6 their prior distribution, given New GM's exposure to
7 potentially \$1 billion worth of new stock if we can overcome,
8 if we can overcome the summary judgment decision, not to
9 mention all the exposure that New GM continues to have in
10 remaining claims at the MDL level, given our incentive after
11 years of waiting and, unlike the beneficiaries, without getting
12 any interim distributions along the way and suffering our own
13 legal expenses, whereas everyone else is getting paid for what
14 they do here and what they had been doing over the years, we
15 have every incentive in the mediation to want to see, within a
16 30/60-day period, can we all align our respective interests in
17 light of the inflection point we've reached.

18 THE COURT: Let me ask you a couple of questions,
19 Mr. Weisfelner. Do you object to the AAT's payment to the DIP
20 lenders?

21 MR. WEISFELNER: No.

22 THE COURT: Do you object to the 502(h) payments?

23 MR. WEISFELNER: Your Honor, I'm inclined to say let
24 it go for the following reason. It is, at best, a catchup
25 payment to the same percentage everyone else has got. We can

1 likewise get to a catchup to the same level. The problem is we
2 eat all the remaining assets after that. So in terms of
3 balancing the prejudices and because they anticipated a --

4 THE COURT: I already approved the 502. You didn't
5 object to that.

6 MR. WEISFELNER: I was going to say, and because
7 they -- well, I didn't object to it in reliance --

8 THE COURT: You were in the courtroom.

9 MR. WEISFELNER: I don't know that I was.

10 THE COURT: You were. You were.

11 MR. WEISFELNER: Okay.

12 THE COURT: You were definitely here.

13 MR. WEISFELNER: Your Honor --

14 THE COURT: I -- you know, you're not forgettable.

15 MR. WEISFELNER: Well, the 502(h) payments --

16 THE COURT: You sat quietly unusually, but --

17 MR. WEISFELNER: I think we were sort of staring at
18 you for the most part, but I think, Your Honor, the point is --

19 THE COURT: You've never hesitated to object when you
20 have an objection.

21 MR. GOLDEN: Your Honor, I think the 502(h) payment
22 does not present anywhere near the potential prejudice that the
23 excess distribution or the early distribution that the GUC
24 Trust itself wants to make to our ability to get to a result
25 that gives us some recompense for the injuries that we believe

1 we've suffered and can prove, can prove in the bankruptcy court
2 if Your Honor ever gets around estimating a claim, individual
3 or class, and in the MDL. So, Your Honor, for all those
4 reasons, while I appreciate that we're going to take a period
5 of time before we come back and --

6 THE COURT: Only a little time.

7 MR. GOLDEN: Only a little time. I wonder whether or
8 not we'd all be better off if the GUC Trust and Mr. Golden's
9 clients were told that, you're going to spend the time in a
10 mediation involving New GM that you want to invite yourself to
11 Judge Furman's courtroom, where we could advise Judge Furman
12 that they're now part of the mediation. I think Judge Furman
13 would --

14 THE COURT: I'm going to be in Montana.

15 MR. WEISFELNER: What's that?

16 THE COURT: I'm going to be in Montana.

17 MR. WEISFELNER: And that's where I wish I was going
18 to be on Thursday, but I will be in front of Judge Furman. I
19 think we'll all be in the courtroom. Having everyone marching
20 to chambers as mediation parties, as directed by Your Honor, I
21 think would be a major benefit that the entire process could
22 benefit from.

23 THE COURT: Thank you, Mr. Weisfelner.

24 MR. WEISFELNER: Thank you.

25 PA2: Good morning, Your Honor. Kyle Kimpler from

1 Paul Weiss on behalf of New GM. And first, let me just
2 apologize to the Court. I'm recovering from a little bit of a
3 cold. I don't always sound this bad.

4 Your Honor, I'm going to be very brief, two minutes.
5 I have a couple of points to make, and then if you want to ask
6 any questions, that'd be great.

7 First, New GM does not object to the distribution to
8 the DIP lenders or the distribution on the 502(h) claim. We
9 are here because -- and I think the Court --

10 THE COURT: Do you have standing?

11 MR. KIMPLER: We believe we do have standing, and let
12 me tell you why. We're here because we believe, and I think
13 the Court picked up on this earlier, that what's really going
14 on here is not all that different than what was going to go on
15 under the proposed settlement. The idea under the proposed
16 settlement was let's take all of the assets that currently
17 exist in the GUC Trust, let's send them over to the
18 unitholders. Let's leave the plaintiffs looking only to New
19 GM. Last year, in your decision on class certification, you
20 found that that was something we had standing in.

21 What's going on, the motions before you today
22 accomplish the same thing. Let's take all of the money in the
23 GUC Trust and send it to the unitholders, and if the settlement
24 falls apart or the plaintiffs need to look for a recovery, they
25 can look to New GM for the adjustment shares. The issues are

1 the exact same. It's how do you look at allowed unsecured
2 claims. Last year, when you found that we did have standing,
3 the question was can you allow a class claim that has not been
4 certified. The question today is, can you allow a claim if it
5 wasn't filed in March 2011. So the issue is the same. The
6 purpose of what they're doing is the same, to leave the
7 plaintiffs looking to New GM for any recovery. So yes, we
8 think we do have standing and -- for the same reasons you found
9 last year.

10 Your Honor, I wanted to make just three quick points.
11 First, as we said a lot in our objections, we believe that the
12 only basis in the motions was reliance on a position that
13 unless a claim was filed in -- by March of 2011, it is not
14 possible to have an allowed claim. It is not possible to be a
15 GUC Trust beneficiary. We believe they are still sticking to
16 that position. It's in their reply papers. We've heard again
17 here today. If there's not a settlement, you can never be a
18 GUC Trust beneficiary.

19 THE COURT: They can if I allow late claims.

20 MR. KIMPLER: So if there's a question over that
21 issue, if it's not clear, then it's a binary outcome. Either
22 you have to have asserted a claim by 2011, in which case the
23 proposed settlement can not work, or if you can because Your
24 Honor can allow it -- and we know that they want to allow them
25 to file late claims -- then you should reserve for the claims.

1 We believe they are taking fundamentally inconsistent legal
2 positions, and it's not because one of them is just tied up in
3 a settlement. They're asking you to enter two orders, an order
4 today which you indicated you're not likely to order, but to
5 allow the money to go out because you can't hold claims, and
6 then an order later on in an estimation trial that says, yes,
7 you can hold claims. We believe those cannot be reconciled.

8 The last point, Your Honor, I want to make very
9 quickly is we saw in the GUC Trust reply paper and again here
10 today that there is a desire to go forward with settlement, the
11 proposed settlement. As Mr. Weisfelner noted, there is a
12 provision in that settlement that says if Judge Furman were to
13 issue a ruling, the parties would meet and confer and think
14 about how it impacts the settlement. But apparently without
15 that, they have decided to still go forward. And I think you
16 heard from Mr. Golden that, of course, they want to go forward
17 because in their view, all the risks is on Mr. Weisfelner's
18 side. The problem with that, Your Honor, is that to certify
19 the classes under a settlement theory, under Rule 23(e), you're
20 going to have to find that it is not just reasonable to the GUC
21 Trust but that it is fair and equitable to the class members.
22 As you've noted, the likelihood that the plaintiffs can meet
23 the threshold so that they could get recovery under that
24 settlement is in serious question.

25 THE COURT: Well, whether or not they can meet the

1 threshold -- how do I certify a non opt-out class if there is
2 no common issue about damages?

3 MR. KIMPLER: Absolutely.

4 THE COURT: It's not even a question of --

5 MR. KIMPLER: It's not --

6 THE COURT: That's without regard to the \$35 billion
7 figure.

8 MR. KIMPLER: Correct. It's not just Rule 23(b).
9 It's 23(a)(2). There have to be common issues. If all we're
10 talking about is how much did it cost, how much lost wages did
11 you have -- lose when you had to go get repaired, those are
12 probably not susceptible to common proof.

13 The other thing that we would say is when you read
14 the settlement papers, they make much to do about how the GUC
15 Trust have studied the proffered evidence. That proffered
16 evidence has now been thrown into question --

17 THE COURT: Spare me that argument. Okay. That's --

18 MR. KIMPLER: So we're just -- we are uncertain right
19 now if they are going forward with the settlements, and if they
20 are, you know, how they are sticking to -- remember, the
21 settlement requires the GUC Trust to seek an estimation order
22 that finds \$10 billion of claims. What we've heard today is
23 that they're still going to do that notwithstanding the
24 opinions.

25 Your Honor, so that was the only points I wanted to

1 make, and if you have any questions, I'm happy to address them.

2 THE COURT: Thank you.

3 MR. KIMPLER: Actually, Your Honor -- I'm sorry. You
4 mentioned earlier that you wanted to have some supplemental
5 briefing sometime in the future. At least from my perspective,
6 I wasn't quite clear what that was intended to cover. And I
7 can leave that for later in the hearing if you'd prefer.

8 THE COURT: Okay. Thank you.

9 MR. KIMPLER: Thank you, Your Honor.

10 THE COURT: Ms. Going.

11 MS. GOING: Your Honor, Kristin Going on behalf of
12 the GUC Trust. I have three short replies.

13 First, I won't keep anyone in suspense, and I'm happy
14 to put on the record that the GUC trust is not exercising its
15 termination right under the settlement agreement on September
16 15th. We fully intend to proceed with the settlement agreement
17 right now.

18 As for the meet and confer, I would be delighted to
19 meet and confer as soon as the economic loss plaintiffs have a
20 path forward and understand what it is that they are going
21 to do. But as I understand it, they don't have such a path.

22 THE COURT: So there's a hearing -- there's a
23 conference scheduled before Judge Furman. It's his decision.

24 MS. GOING: Right.

25 THE COURT: It's -- whether you agree with it or

1 disagree with it, it's a remarkable, in my view, carefully
2 crafted opinion. He may be right, he may be wrong. Obviously,
3 parties disagree. But it's a very careful, carefully done
4 opinion. And, you know, either he'll change his view or a
5 higher court above him will, at some point, change it. But
6 I'm -- you call it meet and confer or mediation, I --

7 MS. GOING: Well, Your Honor, those are two --

8 THE COURT: Just stop a second. I'm not ordering
9 mediation. I hope that the parties will engage again. I think
10 you all need -- I don't know what position the economic loss
11 plaintiffs will take with Judge Furman this week and whether
12 they're going to say they need more time to figure out what
13 they want to do. But you know, there, there's a conference
14 scheduled. I don't plan to keep millions or even hundreds of
15 millions of dollars held hostage until here -- you know, from
16 here until there is a final, final, final resolution of the
17 issues. I'm not prepared to see the money go out today for
18 excess distributions.

19 I want the DIP lenders repaid. I want the 502(h)
20 claims paid to equalize their distribution with amounts that
21 have been paid in the past. I would like for the AAT and the
22 GUC Trust to find a way for the GUC Trust to take on
23 recognizing two -- maybe it's not possible. I don't know. But
24 I wasn't aware that -- it didn't dawn on me that they were
25 separate populations of parties entitled further distributions.

1 It seems to me that keeping requiring the AAT to
2 remain in existence for -- you know, is -- should be
3 unnecessary. Wilmington Trust is the trustee of both trusts.
4 Am I right about that?

5 MS. GOING: Yes, Your Honor.

6 THE COURT: Okay. Different capacities, but it's the
7 same trustee. Okay. There's gotta be a way to solve that
8 issue.

9 I -- this is what I want to happen. I want you all
10 to work out a briefing schedule, including New GM. I'm not
11 deciding the standing issue. They'll file it in -- you know,
12 they'll file a brief anyway. It wouldn't -- frankly, the
13 comment I made earlier, I think I would be at the same point
14 whether New GM has standing or doesn't have standing at this
15 point.

16 I hope you'll go back to mediation. It's part of
17 figuring out the path forward. If you can't, we're going to
18 go -- you know, if you don't come up with some other proposed
19 resolution, I will decide claims. Okay.

20 MS. GOING: Your Honor, I have one last --

21 THE COURT: Go ahead.

22 MS. GOING: -- point just on New GM's standing. I
23 would ask that you rule on that issue after the briefing is
24 fine, but there's a real concern now that we are down to this
25 last pot of money, right, that anyone and everyone can come out

1 of the woodwork and start raising issues and objecting to
2 whatever the GUC Trust is trying to do in terms of making these
3 final distributions. We are -- I mean we've been in a winddown
4 situation, right, since 2011, but there has to be, you know,
5 some sort of protection that we are not going to be fending off
6 anyone and everyone who wants to come before Your Honor to
7 object to any distributions that the GUC Trust is trying to
8 make.

9 THE COURT: I'm not ruling on standing today. Is
10 that clear?

11 MS. GOING: Thank you.

12 THE COURT: One way or the other.

13 Mr. Fisher.

14 MR. FISHER: Your Honor, this is more by way of
15 clarification than argument.

16 THE COURT: Sure.

17 MR. FISHER: It's just with respect to the
18 distribution on account of the 502(h) claims, the objective is
19 to, of course, treat those claims such that those creditors
20 catch up to and are treated the same as other allowed unsecured
21 creditors. That would require the catchup distribution from
22 the GUC Trust on or about September 3rd or whatever the Court's
23 order provides. The AAT then, it would -- if it were ordered
24 to make the distribution to the DIP lenders and it's, of
25 course, been confirmed that there is no objection to that

1 distribution --

2 THE COURT: There were no objections to repaying the
3 DIP lenders.

4 MR. FISHER: Right. So the AAT cannot make a
5 distribution to the 502(h) claimants ahead of any other
6 unsecured creditors because then they would be getting treated
7 favorably. And I don't think anyone is asking for the AAT to
8 make a distribution to 502(h) claimants to the exclusion of
9 other unsecured creditors. I just wanted to be explicit and
10 clear about that.

11 THE COURT: Well, here's what -- the orders -- the
12 proposed orders that were submitted don't work for me. I want
13 an order that directs the payment of the DIP lenders. It can
14 be a separate order, and maybe it should be a separate order in
15 case there are -- no one's complaining about -- no one's
16 objecting to the payment -- repayment -- the payment of 30
17 percent to the DIP lenders. A separate order that should deal
18 with payment of the 502(h) claimants with language that makes
19 clear that their distributions are to be brought equal to the
20 distributions that have been made to unsecured creditors.

21 I would like for you, if possible, to deal with the
22 balance of the funds so that they could go to the GUC Trust.
23 And I understand there are two different pools of -- two
24 different populations with inarguable entitlement to them. See
25 whether you can work that out in such a way that -- because

1 it's the same trustee -- that you can deal with the language
2 that will recognize, yes, there are two different entitlements,
3 but that -- if I understand you correctly, Mr. Fisher, because
4 of the two different populations, there are some of your
5 beneficiaries who have not received distributions that would
6 equalize them to the GUC Trust beneficiaries. Is that correct?

7 MR. FISHER: No, Your Honor, our distributions would
8 be on top of the 29 percent that has been received by all
9 allowed unsecured --

10 THE COURT: That's what I don't want to happen. I
11 want that money above the 29 percent to be held. My preference
12 is that the GUC Trust hold it, that the order reflect that
13 the -- there may be different entitlement above that, but I
14 don't see a reason why the AAT should have to stay in
15 existence to do that.

16 MR. FISHER: And my only suggestion in that regard,
17 Your Honor, is that the distribution on account of the DIP
18 lenders is very straightforward. Distribution by the GUC Trust
19 on account of the 502(h) claims to bring those claims current
20 to the 29 percent is very straight forward. I understand the
21 efficiency impetus behind Your Honor's recommendation that the
22 AAT find a way to turn the proceeds over to the GUC Trust and
23 allow for a single trust to make all distributions going
24 forward, even if there are two different populations. And I
25 think that that just requires some fresh thinking and working

60

1 through trust documents to figure out what the cost benefits of
2 that truly are. And I wouldn't want that to hold up any of the
3 other --

4 THE COURT: No, that's fine. I went through the
5 trust -- I went through all these documents to see if there was
6 some impediment to my saying, put the money in -- I didn't
7 realize -- maybe I should have realized that there were two
8 separate populations of beneficiaries. I didn't see that part.
9 Okay. I looked to see whether there was something in the
10 organic documents that would prevent me from directing, give
11 the rest of the money to the GUC Trust to hold. And maybe it
12 isn't such a big deal. I'm trying to minimize the burden and
13 the expense going forward.

14 Okay. What I would like you to do is see whether you
15 can work that out. If you can agree, put it in the form of a
16 proposed order to do it. If you can't --

17 MS. GOING: And I would --

18 THE COURT: Go ahead, Ms. Going.

19 MS. GOING: -- just say, Your Honor, we're more than
20 happy to have those discussions, but just to expectations,
21 that's going to take a week or more for us to go through the
22 documents and try and come up with a solution, in terms of
23 alerting the Court.

24 THE COURT: You're not saying that -- do the payments
25 to the 502(h) claims have to wait or no?

1 MS. GOING: No. I was strictly speaking to this
2 notion of coming up with a proposed order to --

3 THE COURT: That's fine because I wasn't going to let
4 the money go in any event.

5 MS. GOING: Right. Right. So --

6 THE COURT: The fact -- I'm away until August 20th.
7 Hopefully, by then, you can find the -- provide me with the
8 orders, Mr. Fisher, that will approve the payment to the DIP
9 lenders that will authorize -- and I guess this has to come
10 from you, Ms. Going --

11 MS. GOING: That's right.

12 THE COURT: -- authorize the payments to the 502(h)
13 claimants.

14 MS. GOING: We will do that today.

15 THE COURT: And I'm reserving decision as to what
16 happens to the balance.

17 Try and agree on a briefing schedule. That includes
18 New GM. I will -- you can -- if you want to address the
19 standing issue again, address the standing issue again to make
20 it fresh in my mind. I'm aware of the standing issue, but you
21 can incorporate prior arguments if you want from a prior
22 decision.

23 MS. GOING: And that briefing schedule, the briefing
24 will be on the impact of the Furman decision as it relates to
25 the --

1 THE COURT: And I think you'll see what happens.

2 MS. GOING: -- excess distribution.

3 THE COURT: You know, Thursday may have some bearing
4 on that.

5 MS. GOING: Sure.

6 THE COURT: Okay. And you all can get a date from
7 Deanna, my courtroom deputy, for further hearing on it, but
8 that may be impacted -- I think you ought to wait until after
9 Thursday until the path forward before Judge Furman is clear.

10 Okay. And, look, I -- the Second Circuit vacated
11 Judge Gerber's mootness ruling. It did not conclude that it
12 was not moot. It vacated the mootness ruling. There are -- I
13 think there are arguments that can be made on all sides -- I
14 think there's more than two sides -- as to whether or not, in
15 spite of the history that's occurred, that the Court could
16 determine equitable mootness applies. Are the issues different
17 with respect to disgorgement than they are with respect to the
18 balance of the assets in the GUC Trust? Creditors'
19 expectations fit into the mootness analysis, but it's been
20 certainly, since the Second Circuit's Elliott decision, anybody
21 who's traded claims has to have been aware that there was a
22 risk that late claims motions would be made. They would be
23 allowed on a class basis or an individual basis. So I think
24 creditor expectations, you know, arguments can be made on both
25 sides about it.

1 So if, hypothetically, the court concludes, yeah, I'm
2 going to permit late claims, I'm not going to permit late class
3 claims, I'm going to allow -- set a period of time for economic
4 loss plaintiffs to file individual claims, and then I can't
5 imagine how many you're going to file. It can be lots, it can
6 be a small number, I don't know. And then, they'll have to be
7 resolved. You can -- you know, the GUC Trust will object to
8 them or not. I don't know.

9 That path forward is very uncertain. And frankly,
10 what it -- and I think everybody is at risk. I think New GM is
11 at risk because the accordion shares are still very much
12 potentially at play. Maybe they think they've hit a home, you
13 know, a home run with Judge Furman's decision, maybe a double
14 or triple or, you know, or it may get reversed or whatever.
15 But it's still at risk. You know, their calculation may be
16 it's not a billion dollars at risk, but it's still a
17 substantial risk, and they ought to come to the table in trying
18 to resolve the economic loss claims in this court.

19 Let me ask Mr. Steinberg or Mr. Basta a question
20 in -- and I don't know what you want to -- this deals with the
21 personal injury/wrongful death claims. And I know you've
22 provided me with status letters.

23 Go ahead. Whoever wants to address the issue.
24 You've provided me with status letters indicating that New GM
25 had settled most of the personal injury/wrongful death claims.

1 I don't know -- there was nothing in any of those letters that
2 suggested that any of that was -- you know, nothing that
3 (indiscernible) was coming from the GUC Trust. I assumed New
4 GM was paying that. It hasn't affected where New GM stands in
5 terms of the amount of allowed claims at this point.

6 Go ahead.

7 MR. KIMPLER: Good afternoon -- or good morning, Your
8 Honor. It's Kyle Kimpler again from Paul Weiss.

9 THE COURT: You've got five minutes in the morning
10 left.

11 MR. KIMPLER: I'll be done in that.

12 THE COURT: Yeah, it's okay.

13 MR. KIMPLER: Your Honor, you are correct. The
14 settlements have been with New GM money. They do not count
15 towards allowed unsecured claims. We also always try to get
16 releases for the GUC Trust. As far as numbers go, I believe we
17 were here the first time, Paul Weiss, before you about a year
18 and a half ago. At that time, there were approximately --

19 THE COURT: Is it that long? Gosh.

20 MR. KIMPLER: -- there were approximately 700
21 personal injury claims on this docket. We believe today that
22 we have settled 625 or so. There are about 80, 85 claims
23 remaining. We believe all of those claims were filed well
24 after the January 2017 deadline set by this Court. I believe
25 they're all represented by the Lisa Norman firm.

1 THE COURT: Is there any further effort being made to
2 resolve those?

3 MR. KIMPLER: Your Honor, for many of them, and I
4 think for most, New GM has no information about those claims,
5 and so we have not been able to validate them.

6 THE COURT: Ask.

7 MR. KIMPLER: I would have to -- Your Honor, in
8 fairness, I would have to check with our MDL counsel on the
9 communications. I don't know.

10 THE COURT: Okay. Thank you.

11 MR. KIMPLER: Thank you.

12 THE COURT: All right. Anybody else want to be
13 heard?

14 MR. FISHER: Your Honor, I'm sorry to keep rising.

15 THE COURT: No, go ahead, Mr. Fisher.

16 MR. FISHER: It's just that the -- in terms of
17 finding the most efficient way for the GUC Trust and the AAT to
18 make distributions to unsecured creditors, it occurs to me even
19 just sitting here that there are also tax implications that
20 need to be thought through. That may take some time. It's of
21 course very important to both trusts, their respective tax
22 treatment. It might require applications to the IRS to ensure
23 that that wouldn't affect the tax treatment, which is all to
24 say that I think it's optimistic to think that this is
25 something we could do in a week or two. I certainly, on behalf

1 of --

2 THE COURT: Well, what would have happened if I
3 granted the motions today?

4 MR. FISHER: We would then have proceeded to make
5 distributions as quickly as possible. And once we succeeded in
6 distributing all of the cash, that process, in and of itself,
7 does take some time. We would've been in a position to start
8 winding down our trust.

9 THE COURT: What about the tax issues?

10 MR. FISHER: The tax -- we have been recognized by
11 the IRS as a liquidating trust, and so we need to ensure that
12 we don't do anything that would in any way jeopardize that
13 status such that the proceeds received by the trust would be
14 taxable. That's not my area of expertise, but I know it's a
15 very sensitive, obviously, and important consideration.

16 THE COURT: Mr. Fisher, I'm very happy to have you
17 appear before me on behalf of the AAT. And if it is not
18 feasibly to promptly wind down the AAT trust by transferring
19 the money to the GUC -- the remaining funds to the GUC Trust,
20 so be it. My goal is very simple. I am trying to simplify the
21 path forward. If I'm making it more complicated, I won't do
22 it, but I just --

23 MR. FISHER: Your Honor, we certainly share that
24 goal, and we'll work with the GUC trust to explore what modes
25 are available for us to achieve exactly that objective.

1 THE COURT: So we're clear, what I'm going to get for
2 now is an order permitting the payment to the DIP lenders and
3 order permitting the payment to the 502(h) claims to bring them
4 to the 29 percent. And decision as to any further
5 distributions are reserved.

6 And as to -- let me ask. Mr. Weisfelner, do you
7 intend to appeal an order providing for distribution to the DIP
8 lenders, the 502(h) claimants?

9 MR. WEISFELNER: My intention is irrelevant. I'd
10 have to confer with co-leads. My guess is that there'll be no
11 appeal.

12 THE COURT: All right. Well, then I can't resolve
13 it today. Let's have distributions pursuant to the orders may
14 be made on or after September 3rd. Okay. So if there is going
15 to be an appeal, don't wait until Labor Day to file it. The
16 same for New GM, although I think New GM indicated it didn't
17 object to either of those. So it's really the economic loss
18 plaintiffs.

19 MR. WEISFELNER: I understand, Your Honor.

20 THE COURT: Mr. Weisfelner --

21 MR. WEISFELNER: I will endeavor to get an answer --

22 THE COURT: -- if you can, in the next day or two,
23 work out that the economic loss plaintiffs don't intend to
24 appeal, communicate that, and then there's no reason to wait
25 until --

1 MR. WEISFELNER: That was going to be my suggestion,
2 Your Honor, that I be afforded an opportunity --

3 THE COURT: Okay. So when I get an order, it'll
4 either provide for payments on or after or commit the payments
5 immediately if there's not going to be any -- I just wanted to
6 make sure that I didn't order distributions immediately and
7 then everybody's scurrying around to try and get a stay or
8 something like that.

9 MR. WEISFELNER: Your Honor, I'm going to approach
10 the microphone gingerly because I've already heard what Your
11 Honor said with regard to mediation. And here's the reality on
12 the ground. New GM and the Colbys (phonetic) were involved in
13 discussions that, had they been successful, would have resolved
14 both the MDL and the Chapter 11 proceedings. Those
15 discussions, which Judge Furman -- I don't know if he directed
16 it, but he was anticipating they were going to happen --
17 pre-date or coextensive with the discussions that New GM had
18 successfully with the personal injury and wrongful death
19 claimants.

20 I think it's fair to say -- not telling tales out of
21 school -- that New GM's position had always been, why are we
22 the exclusive piggy bank for resolution of the economic loss
23 claims? You need to involve the GUC Trust and the GUC Trust
24 beneficiaries. Their position had been, we had a settlement
25 agreement, we've given it to the office, we're not giving any

1 more. And I fear that a continued dialogue among the parties
2 without the benefit of some oversight, someone underscoring if
3 not for the professionals, who I think are well versed in what
4 the risks are, but the underlying businesspeople, the true
5 parties in interest, to understand what their risks are. And
6 again, in a mediation, that could be very short lived. It
7 could be subject to whatever Judge Furman decides Thursday.
8 But a mediation with some structure and some individual who can
9 decide to call in people and say, this is my understanding of
10 the risk and here's where I think might happen and, you know,
11 you got piece together contributions from Party A,
12 contributions from Party B, in the hopes that it satisfies
13 Party C.

14 I just think without the benefit of adult
15 supervision, for lack of a better term, we've tried this
16 before. And I think given the inflection point associated with
17 Judge Furman's decision, frankly in my view, rather than brief
18 Your Honor on the impact of Judge Furman's decision, which we
19 can all do -- if it's helpful to the Court, we should do it --
20 I'd rather spend the time and energy seeing if we can't resolve
21 this. We'll know in the space of a couple of weeks if it's
22 resolved.

23 THE COURT: Mr. Weisfelner, I'm all in favor of
24 proceeding down the dual path. You're going to agree on a date
25 for briefing. You're going to get a date for argument before

1 me. You've got a hearing before Judge Furman on Thursday. It
2 makes good sense to me for you all to come to a resolution.
3 You'll do it with a hearing date before me. What's going
4 happen before Judge Furman, Judge Furman will decide. You
5 know, take Mr. Golden and Mr. Steinberg and Mr. Basta to lunch
6 and Ms. Going and see if you can come to an agreement to
7 proceed with a mediation. What you'll do that -- and I hope
8 you will. I hope you all will. It makes good sense for all of
9 you because the path forward is very uncertain. Okay.

10 The implications of Judge Furman's decision for class
11 certification not only in the district court, which he did not
12 decide yet, but in this court, as well, great potential impact
13 on that. Judge Furman granted summary judgment. He didn't
14 just decide to Daubert motion. Yes, he did it on three -- for
15 three states, but the -- agree on a briefing schedule. Agree
16 on a hearing date. If you go to mediation and you decide
17 you're all making progress and want to put off the hearing
18 date, I'll certainly -- what I did for today. You wanted the
19 hearing date put off. Mr. Fisher and Ms. Going did not. I
20 wouldn't move it. I typically ask whether all parties' motions
21 consent. Yes, there are times even without consent, I'll go
22 ahead and move it, but we'll move forward in what I consider to
23 be parallel paths. Hopefully, you can -- your side can raise
24 with judge Furman on Thursday mediation. Who is -- he's had a
25 retired judge or a district judge?

1 MR. WEISFELNER: I think it was Magistrate Cott who's
2 been involved in some mediation efforts, and I think there was
3 Layn Phillips --

4 THE COURT: Judge Phillips.

5 MR. WEISFELNER: But, you know, finding the right
6 mediator, I don't think is going to be the issue. Getting at
7 least one of the three parties willing to mediate may be our
8 only issue.

9 THE COURT: Buy Mr. Golden lunch.

10 MR. WEISFELNER: If I have to, I will, Your Honor.
11 And I would be glad to. And I don't think we have to
12 necessarily do it over a meal. He and I have had preliminary
13 conversations along this line, and I'm sure we'll continue to
14 do so.

15 THE COURT: All right. I had been contemplating
16 entering an opinion after today's hearing. I'm not going to do
17 that. Since there is essentially largely agreement on the two
18 parts that I am granting, I'm going to reserve -- well, we'll
19 call it reserve decision as the rest is going to be
20 supplemental briefing before I do that. So I will hold off. I
21 can issue an opinion at this point.

22 Anything else anybody wants to say before we adjourn?
23 We're adjourned.

24 (Proceedings concluded at 12:05 p.m.)

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1 **C E R T I F I C A T I O N**

2
3 I, Alicia Jarrett, court-approved transcriber, hereby
4 certify that the foregoing is a correct transcript from the
5 official electronic sound recording of the proceedings in the
6 above-entitled matter.

7

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9 Alicia J. Jarrett
10

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DATE: August 13, 2019

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